



6560-50

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2012-0914; FRL-9776-8]

Revisions to the California State Implementation Plan, Butte
County Air Quality Management District and Sacramento
Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Butte County Air Quality Management District (BCAQMD) and Sacramento Metropolitan Air Quality Management District (SMAQMD) portions of the California State Implementation Plan (SIP).

These revisions concern volatile organic compound (VOC), oxides of nitrogen (NO_x), and particulate matter (PM) emissions from residential wood burning devices. We are approving local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: These rules are effective on [Insert date 60 days from the date of publication in the Federal Register] without further notice, unless EPA receives adverse comments by [Insert date 30 days from the date of publication in the Federal Register]. If we receive such comments, we will publish a timely withdrawal in

the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by EPA-R09-OAR-2012-0914, by one of the following methods:

1. Federal eRulemaking Portal: www.regulations.gov. Follow the on-line instructions.
2. E-mail: steckel.andrew@epa.gov.
3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail.

www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your

comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California.

While all documents in the docket are listed at www.regulations.gov, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Rynda Kay, EPA Region IX, (415) 947-4118, Kay.Rynda@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to EPA.

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I. The State's Submittal

- A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board.

Table 1 - Submitted Rules

Local Agency	Rule #	Rule Title	Adopted/Amended	Submitted
BCAQMD	207	Wood Burning Devices	12/11/08	04/25/12
SMAQMD	417	Wood Burning Appliances	10/26/06	09/21/12

On June 7, 2012 and October 11, 2012, EPA determined that the submittals for BCAQMD Rule 207 and SMAQMD Rule 417 respectively, met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

- B. Are there other versions of these rules?

There are no previous versions of Rules 207 and 417 in the

SIP.

C. What is the purpose of the submitted rules?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. NOx helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. PM contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control VOC, NOx, and PM emissions. Rules 207 and 417 are designed to minimize the impacts of smoke and other air pollutants generated during the use of wood burning devices.

BCAQMD Rule 207 includes requirements that (a) retailers of wood burning devices provide public awareness materials with each wood burning device sold, (b) newly installed wood burning devices be District-approved and inspected upon installation, (c) all newly installed outdoor wood-fired boilers meet certain EPA or equivalent emission standards, (d) no person shall advertise, sell, supply, or transfer ownership of a used wood burning device, unless it has been deemed permanently inoperable or is a District-approved device, and (e) fuel used in wood burning

devices include only firewood or other wood/plant-based products. The rule also outlines the criteria for District-approval of wood burning devices and exempts devices deemed of historical significance or those transferred via property sale. EPA's technical support document (TSD) has more information about this rule, including identification of several additional control options that are generally reasonably available.

SMAQMD Rule 417 includes requirements that (a) no person sell, offer for sale, supply, install or transfer a wood burning appliance unless it is a U.S. EPA Phase II wood burning heater, a pellet fueled or masonry heater, or an appliance or fireplace that meets the emission standard set forth in 40 CFR Part 60 Subpart AAA and is approved by the Air Pollution Control Officer (APCO), (b) retailers of wood burning devices provide public awareness materials with each wood burning device sold, (c) no person advertise, sell, supply, or transfer ownership of a used wood burning device, unless it has been deemed permanently inoperable or is an approved device, (d) the burning of materials not intended for use in a fireplace/heater is prohibited, and (e) wood sold within the District as "seasoned" or "dry" must have a moisture content of 20 percent or less by weight. The TSD has more information about this rule, including the basis and conclusion that the rule requires all control measures that are

reasonably available.

II. EPA's Evaluation and Action

A. How is EPA evaluating these rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(1) and 193).

Guidance and policy documents that we use to evaluate enforceability requirements consistently include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 Federal Register Notice," (Blue Book), notice of availability published in the May 25, 1988 Federal Register.
2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

Effective December 14, 2009, EPA designated portions of Chico (Butte County), California and Sacramento, California as nonattainment for the 2006 24-Hour PM_{2.5} National Ambient Air Quality Standard (NAAQS). 40 CFR § 81.305 (2010); 74 FR 58688, 58705-58706 (November 13, 2009). For nonattainment areas, a State Implementation Plan (SIP) submittal addressing implementation of all Reasonably Available Control Measures (RACM) as expeditiously as practicable, including Reasonably Available Control Technology

(RACT) for existing sources was due by December 14, 2012. CAA § 172(b) & (c)(1), 74 FR 58689, September 21, 2012. On October 26, 2012 and October 30, 2012 EPA published proposed determinations that the Sacramento and Chico nonattainment areas had attained the 2006 24-hour PM_{2.5} NAAQS based upon complete, quality-assured, and certified ambient air monitoring data showing that these areas had monitored attainment of the 2006 24-hour PM_{2.5} NAAQS based on the 2009-2011 monitoring period. See 77 FR 65346 and 77 FR 65651. If EPA finalizes the determinations of attainment, the requirements for these areas to submit an attainment demonstration, together with RACM, a reasonable further progress (RFP) plan, and contingency measures for failure to meet RFP and attainment deadlines would be suspended for so long as the areas continues to attain the 2006 24-hour PM_{2.5} NAAQS. For purposes of implementing the 2006 PM_{2.5} NAAQS, EPA recommends that states evaluate potential RACM/RACT control measures for sources of direct PM_{2.5} (including condensable PM), SO₂, and NO_x in specific nonattainment areas, consistent with the approach to evaluating RACM/RACT provided in EPA's implementing regulations for the 1997 PM_{2.5} NAAQS at 40 CFR part 51, subpart Z. See Memorandum from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards to Regional Air Directors, Regions I-X, "Implementation Guidance for the 2006 24-Hour Fine

Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS)."

If EPA does not finalize the determinations of attainment for the Chico and Sacramento nonattainment areas, the BCAQMD and SMAQMD will need to adopt as RACM/RACT any potential PM_{2.5}, SO₂, or NO_x control measures that are reasonably available considering technological and economic feasibility and that would, considered collectively, advance the attainment date by one year or more in the Chico or Sacramento nonattainment area. *Id.* Because Rules 207 and 417 regulate direct PM_{2.5} emissions from residential wood-burning devices, the BCAQMD and SMAQMD should consider whether reasonably available control measures for these emission sources could, in combination with other reasonably available control measures, advance attainment of the 2006 PM_{2.5} NAAQS in the area by at least one year. If necessary, in separate rulemakings, EPA will act on the State's RACM demonstration for the 2006 PM_{2.5} standard based on an evaluation of the control measures submitted as a whole and their overall potential to advance the applicable attainment date in Chico, California and Sacramento, California. For additional control options for BCAQMD that are generally reasonably available see the Rule 207's TSD's "Additional Recommendations for the Next Rule Revision".

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant

policy and guidance regarding enforceability, and SIP revisions. The TSDs have more information on our evaluation.

C. EPA recommendations to further improve the rule.

The TSDs describe additional rule revisions that we recommend for the next time the local agencies modify these rules.

D. Public comment and final action.

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by [Insert date 30 days from date of publication in the Federal Register], we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on [Insert date 60 days from date of publication in the Federal Register]. This will incorporate the rule into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of the rules and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rules that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication of this document in the Federal

Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 14, 2013

Jared Blumenfeld,
Regional Administrator,
Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 et seq.

Subpart F - California

2. Section 52.220 is amended by adding paragraphs (c) (419) (i) (C) and (c) (423) (i) (B) to read as follows:

§52.220 Identification of plan.

* * * * *

(c) * * *

(419) * * *

(i) * * *

(C) Butte County Air Quality Management District.

(1) Rule 207, "Wood Burning Devices," amended on December 11, 2008.

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(423) * * *

(i) * * *

(B) Sacramento Metropolitan Air Quality Management District.

(1) Rule 417, "Wood Burning Appliances," adopted on October 26, 2006.